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Supreme Court, U.S.
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NO. 00-1783

IN
THE SUPREME COURT OF THE UNITED STATES

October Term 2000.

ERLING R. KROSBY
Petitioner

v.

HARRELL Z. BROWNING, THE CONTINENTAL INSURANCE COMPANY, KLEBERG & HEAD, SHELBY A. JORDAN, MATTHEW A. ROSENSTEIN.
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals

PETITIONER'S REPLY BRIEF

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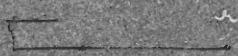

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REPLY TO RESPONDENTS' COUNTERSTATEMENT OF THE CASE

Respondents state that they disagree with Petitioner's version of the facts. (Br. in Opp. 1). Respondents do not address which of the Petitioner's facts are perceived as misstatement of facts as required by this Court's Rule 15 and therefore, Respondents' statement is meant to cast a shadow of doubt on all the facts stated by Petitioner, which is actually a misrepresentation of facts.

Respondents cite several statements made by the District Court. However, such statements are false statement made by Respondents to the lower courts in order to obtain a summary judgment. . When such statements are repeated in Respondents' Brief in Opposition this is also misrepresentation to this Court, which is a very serious matter because this Court is the highest judicial authority of the United States.

As a consequence of such misrepresentation the District Court states incorrectly that Petitioner filed a lawsuit without first conducting a reasonable inquiry into facts, that Petitioner continued to pursue frivolous non-meritorious and vexatious course of conduct and the

allegations of Petitioner lacked evidentiary support. (Br. in Opp. 3.). Petitioner has been involved in this case since 1990 and has in his possession all the documents and pleadings that have been filed. Respondents' allegation that Petitioner does not know the facts in this case, is serious misrepresentation and a fraudulent attempt to support the allegation that Petitioner's lawsuit is frivolous.. The fallacy of the above mentioned incorrect statements is also proved by the fact that the courts below have prevented major discoveries to be performed in this case.

It is also a grossly distortion of facts when Respondent and the District Court state that Petitioner has stated that the bond is invalid. (Br. in Opp. 3) Petitioner has stated that Respondent Continental Insurance Company's allegation that it has subrogation rights against Respondent Browning is invalid because this is not stated in the trustee fidelity bond. It is also serious distortion of facts when Respondents through the District Court allege that Petitioner has stated that the bankruptcy court has jurisdiction and later changed that to a statement that the bankruptcy court has no jurisdiction. The truth of the

matter is that petitioner has stated that the bankruptcy court has jurisdiction of Respondent Continental pursuant the Bankruptcy Code 322 and Bankruptcy Rule 2010, but when the bankruptcy court did not reserve it jurisdiction in the Creditor Plan, the District Court has original jurisdiction and appellants have a right to a jury trial. (See Petition 28)

It is also a serious misrepresentation to this Court when Respondents confirm the District Court's statement that Petitioner made misrepresentation in his Pro Hac Vice Motion. In Petitioner's Motion (App 168 and 169) the only information that is given to obtain an approval of being admitted Pro Hac Vice is that Petitioner is admitted to the United States District Court for the Eastern District of Pennsylvania. Therefore, Respondents give false information to the District Court in order to have Petitioner's admission Pro Hac Vice revoked so he could not represent his client, Tor Husjord Shipping, in an appeal to the Fifth Circuit.

It is also misrepresentation of facts when Respondents confirm the District Court's opinion that

Petitioner misrepresented his client's location , status and health condition. Petitioner filed each time his client could not appear a motion for continuance stating the reasons given by his client for not being able to appear. It is abuse of discretion to revoke Petitioner's Pro Hac Vice for non-appearance of his client. Petitioner has also not misrepresented who the real party in interest is as alleged by Respondents. See App. 145-148. Petitioner's authority to represent his clients is stated in Tor Husjord's Affidavit (See App. 149-151).

As can be seen from the above statements and evidence the District Court's Summary Judgments and sanctions against Petitioner pursuant to Rule 11 of Fed. R. of Civ. Proc are based on misrepresentation of Respondents and should therefore be reversed.

However, the major basis for Petitioner's Petition for Writ of Certiorari is that the District Court's impartiality can reasonably be questioned because first of all the court's intention to prevent an appeal by revoking Petitioner's admission Pro Hac Vice as proved by the transcripts of the hearings. (App. 133-139), makes the

whole Summary Judgment of the District Court void. Petitioner respectfully argue that it would have a negative effect on the respect for the judiciary system if this Court does not decide that such conduct makes the Summary Judgment void.

RESPONDENTS' REASONS FOR DENYING THE WRIT.

(1). (i) Respondents' argument that Question No. 13 would cause the Supreme Court to become bogged down by complicating facts is not convincing because the facts are proved by the transcript of a hearing. (App. 133-139.).

(2) Question 17 is only a procedural question . The right for a person to appear Pro Se cannot be denied pursuant to the laws of the United States.

(3) Question No. 21 is only a procedural question. There is no rule of law that would deny a party from proving by affidavit that his attorney has the authority to represent him.

2. The allegation of Respondents that there is no conflict among the Circuits or the lower Courts is

incorrect . The question of immunity as a judge for bankruptcy trustees and the basis for liability of trustees, have been subject to different opinions of the Circuits. Further, what is an even more serious question is that the lower courts have made decisions contrary to several decisions of this Court. Most important is *Mosser v. Darrow*, 341 U.S. 267 (incorrect citation in Petition) which states that any act of a trustee which is contrary to the interest of the creditors makes the trustee subject to liability for damages. It would not make any sense to deny that selling real estate for almost 1/3 of their approved value without objective appraisal of an appraiser and without approval of the court and further, failure of maintaining the vessel in good conditions, are not conduct that is contrary to the interest of the creditors.

Another important decision of this Court that the District Court has ignored is *Celotex Corp. v. Carrett*, 477 U.S. 317 which states that no summary judgment can be entered unless major discoveries have been performed. The Bankruptcy Court and the District Court have not only entered a summary judgment without such major

discoveries, but, in addition, they denied discoveries of vital evidence in this case.

4. Respondents allege that Questions referred to in the Nos 1,2,3,4,5,6,7,8,9,10,11,12,14,15,16,7,18,19,20,22 & 23 are questions in which Petitioner does not have any standing. The reason for such argument is in line with Respondents' intention to prevent that major issues in this case be reviewed by this Court and that the Summary Judgments of the District Court be reversed. However, by requesting and obtaining a judgment against Petitioner based on the allegation that he has violated Rule 11 because he has filed a frivolous lawsuit, Respondents have opened up for the evaluation of all the issues of facts and law that are pertinent to the issue of a frivolous lawsuit, such as the Questions mentioned above.

5, The argument that the Petition should be denied because the Fifth Circuit dismissed the appeal on procedural grounds does not make sense. When the judge of the District Court lacks impartiality, its summary judgment is void and can be revoked any time even without an appeal.

RESPONDENTS' ARGUMENT IN OPPOSITION TO CERTIORARI.

I. As shown above, the finding of facts of the courts below is based on serious intentional misrepresentation of Respondents and must be set aside as clearly erroneous.

II RESPONDENTS' ALLEGATION THAT THERE IS NO CONFLICT AMONG THE CIRCUIT COURTS AND THE LOWER COURTS..

Respondents argue that Petitioner fails to cite any contrary cases. or authorities regarding Rule 11. However, such cases apparently do not exist because nobody will allege that violation of Rule 11 has taken place when such allegations are based on fraudulent misrepresentations, and the sanctions are due to lack of impartiality of the courts below.

IV. RESPONDENTS' ALLEGATION THAT PETITIONER HAS NO STANDING.

Regarding this issue it is referred to Reasons for Denying the Writ. item 4. Further, Respondents commit a serious misrepresentation when they fail to inform this Court about the fact that the complainant regarding the pending disciplinary proceeding against

Petitioner in Pennsylvania is Respondent Browning, who unlawfully uses the Rules of Professional Conduct and disciplinary rules as a procedural weapon to prevent Tor Husjord from having a counsel who can file his petition for writ of certiorari. Such unlawful action should make him subject to disciplinary and procedural sanctions especially because this weapon has been used previously by Respondents by requesting the District Court to revoke Petitioner's admission Pro Hac Vice.

V. RESPONDENTS ARGUMENT THAT FIFTH CIRCUIT DISMISSED THE APPEAL ON PROCEDURAL GROUNDS WITHOUT REACHING THE MERITS.

The statement of Respondents that Fifth Circuit granted Respondents' Motion to Dismiss because of Petitioner's failure to timely file a statement of issues may not be true because the Fifth Circuit did not make any statement of fact and conclusion of law, and, the decision is obviously based on the wrong assumption that the appeal was from a judgment of a District Court exercising appellate jurisdiction in a bankruptcy case, see Rule 6(b) of Rules of Appellate Procedure, when it is a fact

that the District Court entered a summary judgment De Novo and therefore the requirement of Rule 6(b)(2) (B) that a statement of issue to be presented on appeal shall be served upon appellee, is not applicable, but only Rule 6(a). A statement of issues was served after the deadline even though not required. However, even if Rule 6(b) is applicable in this case, an appeal otherwise correctly filed should not be dismissed because of technicalities that do not cause prejudice to the other party.

This case raises the issue whether the lower courts attempt to establish that a trustee shall have full immunity as a judge. This Court should re-emphasize the proper rule of law stated in *Mosser v. Darrow* and thereby in the future reduce the risk of bankruptcy fraud.

CONCLUSION.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted

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